

REMARKS

Claims 1-26 are currently pending in the patent application. The Office Action dated December 17, 2004 indicates that it is a Final Office Action. However, since the Office Action responds to an RCE which was accompanied by claim amendments, Applicants respectfully assert that the Office Action should be non-final. Applicants' undersigned attorney contacted Examiner Steven McAllister to confirm the non-final status of the Office Action in a March 17, 2005 telephone interview. The telephone interview did not, however, result in resolution of the status of the Office Action. Applicants herein respectfully request confirmation that the December 17, 2004 Office Action was a non-final office action.

The Examiner has objected to claim 1 for its recitation of a "user interface for a user to dynamically identify..." Applicants have amended the language of Claim 1, in accordance with the Examiner's suggestion, and believe that the claim is no longer objectionable.

Claims 1-9, 13-21 and 26 have been rejected under 35 USC 102(e) as anticipated by Walker '667. The Walker '667 patent is directed to a method and system for selling an

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aging food product as a substitute for an ordered product. When a food product has been assembled, a record is created for the food product, including what the product is and when it was prepared. All relevant food products have predefined time limits for sale which are stored in tables. Based on the time that the food product was created and the predefined time limits for sale, the Walker '667 system creates a disposal record for the food product which tracks when a food product can be sold and when it must be discarded. Further, the Walker '667 system may offer the food product as a substitute for an ordered food product and may offer the food product at a discount price prior to expiration of the predefined time limit (see: e.g., Col. 5, lines 60-61).

Applicants assert that the Walker '667 patent does not anticipate the invention as claimed. With specific reference to the claim language, the Walker patent does not teach or suggest steps and the means for performing steps of dynamically identifying time-sensitive inventory to be offered for selective sale; offering inventory for selective sale; handling communications with prospective buyers; and automatically integrating the results of the selective sale. As argued previously, the Walker '667 patent does not teach

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or suggest dynamically identifying time-sensitive inventory to be offered for selective sale. Under Walker, when a food product is prepared, a human operator inputs the time and product type, so that the system can pull up the appropriate predefined time limits and create entries for the disposal table. While the Walker '667 system can track the times for the food product based on the created disposal table, such is not the same as nor suggestive of dynamically identifying time-sensitive inventory for sell off. Walker '667 does not identify the inventory item as time-sensitive, such is preprogrammed into the Walker '667 system based on its predefined tables and human-input information. Further, Walker is not dynamically identifying the inventory, it is simply monitoring a disposal record and offering the item to any potential buyer prior to the discard date.

With respect to the claim step of offering inventory for selective sale, Applicants again note that Walker '667 will offer inventory which is close to the discard date to any prospective buyer. Walker does not teach generating offers to selected buyers and handling communications with those selected prospective buyers. Walker simply substitutes the date sensitive food in any orders received

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or offers the date sensitive food at a discounted price. Walker does not offer or conduct a selective sale.

Finally, Applicants respectfully assert that the Walker '667 patent does not teach or suggest automatically integrating the results of selective sales into the yield and revenue management systems at the supplier site. The present invention integrates the results of any sell off of time-sensitive inventory with existing, "legacy" management systems. As detailed, for example, on page 10 of the present application, such components as accounting software, forecasting software, inventory tracking software, sales tracking software, production software, and respective databases are automatically provided with sell off results. All of the pending claims expressly recite the integrating function. There is nothing in the teachings of Walker '667 patent which anticipates or obviates the integrating component/function. Applicants disagree with the Examiner's conclusion that "[since] the system of '667 as a whole resides at the suppliers site...results are integrated into the management systems at that site." Walker '667 does not teach integration of sales results into existing management systems at the supplier site; therefore, it cannot simply be presumed that such occurs. An anticipation rejection

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requires that the references expressly teach the claim feature or that an alleged inherency necessarily follows from the teachings of the prior art (*The Toro Co. v. Deere & Co.*, 355 F. 3d 1313, 1320 (Fed. Cir. 2004)). Since integration into yield and revenue management systems at the supplier site is not taught by Walker '667 and does not necessarily flow from the teachings, it cannot be maintained that Walker '667 teaches that claim features.

Applicants have reviewed the *Response to Arguments* section and have carefully considered the Examiner's comments. With regard to the argument that the present invention is "generating offers to selected buyers", the Examiner has noted that the claims do not recite that limitation. By the present amendments, therefore, Applicants amend the language of the independent claims to expressly recite that the offers are generated for and communicated to selected prospective buyers, which is neither taught nor suggested by the cited art.

Further, with regard to the claim language related to integration of results of the selective sale into the existing yield and management systems, the Examiner has, as discussed above, concluded that the existing store server 18 of the '667 patent is an existing management system at the

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supplier site. Applicants have amended the language of the independent claims, therefore, to recite the existing yield and management systems comprising an inventory control system and at least one of accounting, marketing, sales and production systems, as is clearly taught for the present invention and which is neither taught nor suggested by the cited art.

It is well established under U. S. Patent Law that, for a reference to anticipate claim language under 35 USC 102, that reference must teach each and every claim feature. Since the Walker '667 patent does not teach the dynamic identifying steps or component, the sell off steps and means for offering inventory for selective sale and for handling the communications, or the steps and means for integrating the results of the selective sale as claimed, it cannot be maintained that the Walker '667 patent anticipates the invention as claimed. Since the Walker '667 patent does not anticipate the language of the independent claims, Claims 1, 13 and 26, it cannot be concluded that it anticipates the language of the claims which depend therefrom and add limitations thereto. Accordingly, Applicants respectfully assert that the Walker '667 patent does not anticipate the language of Claims 2-9 and 14-21.

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Claims 1-6, 13-18 and 26 have been rejected as either anticipated or unpatentable over the Walker '620 patent, and Claims 10-12 and 22-25 have rejected as unpatentable over the Walker '620 patent. The Walker '620 patent is directed to an early priceline.com model of reverse auctioning of goods and services, wherein a consumer selects a "special fare listing" with flight departure and destination information and a specified time range for travel, along with a monetary amount comprising a "bid" for an airline ticket which meets the location and time criteria, and that information is communicated to a reservation manager. The bidding process is handled by a reservation manager which is not at the supplier site. Variables in the process include the identity of the airline carrier (i.e., the supplier) and the departure time (generally including both day and time). In an alternative embodiment, the variables may additionally include the bid price. Upon receipt of a "bid", the reservation manager queries the airline, or a database comprising a plurality of flight and special fare listings, to determine a flight on which to place the consumer at the special fare/bid price. Clearly the Walker '620 patent is not teaching or suggesting a supplier site system and

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method. Moreover, the Walker '620 patent does not teach or suggest the system and steps as claimed.

Walker '620 does not provide a supplier site step and means for dynamically identifying time sensitive inventory for sell off. What Walker '620 teaches is a remote, non-supplier hosted site which receives input from suppliers in response to queries. Clearly Walker '620 is not teaching or suggesting supplier site dynamic identification of inventory for selective sale. Applicants have amended the language of the independent claims to recite that the steps are being performed at the supplier site, as further discussed below.

With respect to the means and steps for offering inventory for selective sale to selected prospective buyers, the Walker '620 hosted site does not offer selective sale, and clearly does not do so from a supplier site. The hosted site, as discussed in the Specification of the present application, is not hosted by the supplier of the inventory, does not offer only the inventory of a single particular supplier, does not offer a selective sale (i.e., only to selected prospective buyers), and does not conduct communications with selected prospective buyers using the supplier's existing communications systems (i.e., e-mail

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lists and/or supplier web site). Clearly, therefore, it cannot be maintained that the Walker '620 patent anticipates or obviates the invention as claimed.

Finally, there is nothing in the Walker '620 patent which teaches or suggests the claim feature of automatically integrating the results of a selective sale into the management systems at the supplier site. Walker '620 makes no mention of automatically updating supplier records/systems. While the Examiner has cited the passage found in the '620 patent at Col. 9, lines 1-5, Applicants fail to see how those teachings anticipate or obviate the invention as now claimed.

In the **Response to Arguments** section, with regard to the '620 patent, the Examiner has noted that "the identifying of items for offering is not claimed at a specific site." Applicants have amended the claim language to expressly state that the identifying of items takes place at the supplier site. Further, with regard to selective sale, Applicants rely on the amendments and discussion presented above regarding sale to selected prospective buyers. Further, the Examiner has noted that the claims do not rule out an intermediary taking part in the selective sale. By the present amendments, the claim language has

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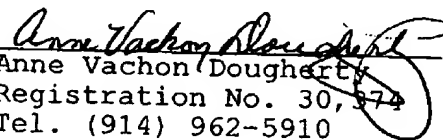
been amended to recite that the offers are communicated directly to the prospective buyers by the supplier site. Finally, with regard to automatic integration of sales results into the supplier system, Applicants rely on the arguments and amendment language discussed above. Applicants believe that the claims as amended are neither taught nor suggested by the cited art. Applicants believe that the claims' amendments place all of the pending claims in condition for allowance.

Based on the foregoing amendments and remarks, Applicants respectfully request entry of the amendments, reconsideration of the amended claim language in light of the remarks, withdrawal of the rejections, and allowance of the claims.

Respectfully submitted,

W. J. Andres, et al

By:


Anne Vachon Dougherty
Registration No. 30,574
Tel. (914) 962-5910

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